

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
TOWN OF FRAMINGHAM REQUEST FOR)	
DETERMINATION OF RATES APPLICABLE TO)	D.T.E. 02-46
TRANSPORTATION AND TREATMENT OF SEWAGE)	
PURSUANT TO INTERMUNICIPAL AGREEMENT)	
)	

TOWN OF FRAMINGHAM'S MOTION TO STRIKE THE NEW DOCUMENTS ATTACHED
TO ASHLAND'S INITIAL BRIEF, AND THOSE PORTIONS OF ASHLAND'S
BRIEF DISCUSSING THESE NEW DOCUMENTS

The Town of Framingham hereby moves to strike the documents attached to Ashland's brief as "Exhibits" 25 through 33, which documents were not entered into evidence at the evidentiary hearing in this matter, and those portions of Ashland's initial brief that make reference to those documents.¹ In support of this motion, Framingham states that these documents were not offered into evidence prior to the close of the hearing, nor has Ashland made a motion to reopen the record for good cause shown, as required by 220 C.M.R. § 1.11(8) and the Hearing Officer's December 9, 2002 Memorandum Regarding Ground Rules for Adjudicatory Proceeding, § I.H. Framingham further states as follows.

¹ Framingham notes that Ashland also largely failed to comply with the requirement that its brief provide appropriate citations to the pages of the record where evidence appears. See 220 CMR 1.11(4)(b). In the interests of moving this matter to a conclusion, however, Framingham has not moved to strike Ashland's brief in its entirety.

1. The evidentiary hearing in this matter closed on September 23, 2003.

2. Prior to the close of the hearing, Ashland did not introduce, mark, or make part of the record the documents attached to and designated in Ashland's initial brief as "Exh. ASH-25" through "Exh. ASH-33" (the "Unmarked Documents").

3. The parties filed and served their initial post-hearing briefs in this matter on October 24, 2003.

4. At no time prior to the filing of the initial post-hearing briefs did Ashland move to reopen the record to admit the Unmarked Documents, as required under 220 C.M.R. § 1.11(8).

5. 220 C.M.R. § 1.11(8) provides that "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Furthermore, in its December 9, 2002 Memorandum outlining the ground rules for this proceeding, the DTE advised the parties that "late-filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits."

6. Moreover, the December 9, 2002 memorandum makes clear that exhibits offered after the close of a hearing will be marked and admitted into evidence "only for good cause shown," and that such exhibits "labor under a heavy burden of

untimeliness, for they would not be subject to cross-examination or rebuttal."²

7. Ashland failed to comply with these procedural rules. Thus, any and all references to the Unmarked Documents, including the actual documents themselves, should be stricken.

8. Ashland refers to the Unmarked Documents at the following pages of its initial post-hearing brief:

?? Page 13, lines 15-23;

?? Page 14, lines 1-15;

?? Page 15, lines 7-21;

?? Page 16, lines 1-2 and 9-10;

?? Page 18, lines 7-15 and footnote 3.

WHEREFORE, the Town of Framingham respectfully requests that the Department strike the documents attached to Ashland's brief as "Exh. ASH-25" through "Exh. ASH-33," as well as those portions of Ashland's brief that make reference to or discuss these documents.

² Although Ashland has not even made the requisite motion to re-open the record, Framingham notes that it would be extremely difficult for Ashland to satisfy this "heavy burden" where facsimile marks on some of the Unmarked Documents make it clear that Ashland had obtained these documents prior to the close of the hearing on September 23, 2003.

Respectfully submitted,

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